

BEMIDJI CITY COUNCIL

Work Session Agenda

Monday, May 8, 2017

**City Hall
Conference Room
5:30 P.M.**



1. CALL TO ORDER / ROLL CALL

2. DISCUSS URBAN FORESTRY / TREE ORDINANCE

3. ADJOURNMENT

***NOTE:** All cellular telephones, pagers and BlackBerry devices to be switched to a non-audible function during Council and Committee meetings.*

COUNCIL AGENDA ITEM



Meeting Date: May 8, 2017

Action Requested: Urban Forestry/Tree Ordinance Discussion

Prepared By: Nicole Deziel, MN GreenCorps Member *ND*

Reviewed By: Marcia Larson, Parks and Recreation Director *ML*

Background

My name is Nicole Deziel and I am the MN GreenCorps Urban Forestry Member for the City of Bemidji. I started my service in September, and it will conclude in mid-August.

I have been developing recommendations for Bemidji's "Shade Tree Disease Control and Prevention" ordinance as well as working to establish clearer tree policies for the City. I researched other communities' ordinances and policies in addition to having conversations with City staff to help shape these recommendations. The current City ordinance and proposed language are attached. I am also conducting a tree inventory of the City's boulevard and park trees, which will be helpful for creating tree policy recommendations and management plans.

Tree Ordinance Recommendations:

- Allow for residents to plant trees on boulevards adjacent to them – with approval of Parks Dept. for tree species and location.
- Update the process for the inspection and removal of privately-owned trees infected with Dutch elm disease and other diseases.
- Defining planting distance from street, utilities, other trees, etc.

Tree Policies:

Establish clearer policies for dealing with current tree challenges:

- Defining and identifying hazardous trees
- Tree disease inspection and removal process
- Planting, preserving, and maintaining boulevard and park trees

Tree Inventory:

- Boulevard and park trees
- Using a GIS application to record information
- Recording species, diameter, crown width, and condition of each tree

Through these projects I hope to provide the City a better basis for managing our urban forest, which is essential in order to deal with current and future threats, such as tree diseases and storms. Having clearer policies will help make tree maintenance activities more efficient, and leave the City less open to liability issues. The GIS tree inventory system will help for determining any current and future problem areas that should be monitored more carefully.

CITY OF BEMIDJI

ORDINANCE NO. , 3RD SERIES

AN ORDINANCE AMENDING CHAPTER 14 OF THE BEMIDJI CITY CODE ADDING ARTICLE VII RELATING TO SHADE TREE PEST AND DISEASE CONTROL AND PREVENTION

SECTION 1. Article V entitled “Shade Tree Pest and Disease Control and Prevention” in Chapter 14 of the Bemidji City Code, entitled “Environment” is hereby amended as follows:

Sec. 14-141. Policy and Purpose.

The health of the trees in the City is threatened by shade tree pests including fatal diseases known as oak wilt and Dutch elm disease, as well as newly spreading diseases and pests, such as the Emerald Ash Borer. It has further determined that the loss of shade trees located on public and private property would substantially depreciate the value of property and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the council to control and prevent the spread of these diseases and provide for the removal of dead or diseased trees as nuisances. In addition to and in accordance with Minn. Stat. §§ 89.001, 89.01, and 89.51-.64 (Shade Tree Pest Control Act), the provisions of this Article are adopted as an effort to control and prevent the spread of these shade tree pests.

Sec. 14-142. Jurisdiction.

The City shall have control of all trees, shrubs, and other plantings now or hereafter in any street right-of-way, park, public right-of-way or easement, or other public place within the city limits, and shall have the power to plant, care for, maintain, remove, and replace such trees, shrubs, and other plantings therein.

Sec. 14-143. Declaration of a shade tree pest.

The Council may by ordinance declare any vertebrate or invertebrate animal, plant pathogen, or plant in the community threatening to cause significant damage to a shade tree or community forest, as defined by Minn. Stat. § 89.001, to be a shade tree pest and prescribe control measures to effectively eradicate, control or manage the shade tree pest, including necessary timelines for action.

Sec. 14-144. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public Nuisance means:

- (1) Any living or standing tree infected to any degree with a shade tree pest or disease;
- or
- (2) Any logs, branches, stumps or other parts of any dead or dying tree, so infected, unless such parts have been fully burned or treated under the direction of the tree inspector.

Shade tree pest or disease means Dutch elm disease, oak wilt disease, emerald ash borer, or any pest, disorder or disease affecting the growth and life of shade trees.

Tree inspector means designated person(s) or such other employee(s) of the city within the Department of Parks and Recreation to carry out the enforcement of this article. Tree Inspectors shall be certified upon completion of a written test and an annual tree inspector certification workshop conducted by the State Commissioner of Natural Resources for the purpose of determining that the applicant possesses the necessary qualifications to be a tree inspector.

Boulevard Tree means trees, shrubs, bushes, and all other woody vegetation on land lying within public rights-of-way between property lines on either side of all streets, avenues, or ways within the City.

Park Tree means trees, shrubs, bushes and all other woody vegetation in public parks and all other areas owned by the city.

Sec. 14-145. Adoption of state law, rules and regulations.

Minn. Stat. §§ 89.001, 89.01, 89.51-64 are hereby adopted by reference, together with the rules and regulations of the state commissioner of natural resources relating to shade tree diseases, provided that this article shall supersede such statutes, rules and regulations only to the extent of inconsistencies.

Sec. 14-146. Unlawful public nuisance; reporting.

A shade tree pest or disease, as defined by Section 14-142, or as declared under 14-1412, occurring within the city is a public nuisance. It is unlawful for any person to permit any public nuisance as defined in this section to remain on any premises the person owns or controls within the city. The nuisance may be abated as provided in this section.

Any owner or occupier of land or any person engaged in tree trimming or removal who becomes aware of the existence of a public nuisance caused by a shade tree pest as defined under subdivision 14-142 or as declared under 14-1412, shall report the same to the city.

Section 14-147. Boulevard tree species permitted.

No species other than those included in the following list may be planted as boulevard trees without written permission of the City Parks Director.

Tree Species for Boulevards

Ash – disease resistant cultivars	Maple, red
Elm – disease resistant cultivars	Maple, sugar
Hackberry	Oak, bicolor
Hawthorne, thornless*	Oak, bur
Honey locust, (thornless and seedless)	Oak, northern pin
Kentucky coffee tree	Oak, red
Linden, American	Oak, white
Maple, Amur	Maackia, Amur*
Maple, Emerald Lustre	Mountain ash

*Only these species may be planted underneath power lines.

(1) *Spacing.* Trees must be planted in the center of the boulevard. No boulevard tree or shrub shall be planted in such a manner that its eventual growth cannot be reasonably controlled. In addition, no boulevard trees may be planted closer than 15 feet from another tree.

(2) *Distance from curb and sidewalk.* No boulevard tree shall be planted closer than 3 feet from curbs or curblines and sidewalks.

(3) *Distance from street corners and fire hydrants.* No boulevard tree shall be planted closer than 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines. No boulevard tree shall be planted closer than 10 feet of any fire hydrant.

(4) *Utilities.* No boulevard tree other than those identified above shall be planted under or within 10 feet of any overhead utility wire. No boulevard tree may be planted closer than 5 feet from water, sewer and storm water utilities.

Sec. 14-148. Public tree care.

The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The City may remove or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected with any injurious fungus, insect or other pest. This section does not prohibit the planting of boulevard trees by adjacent property owners providing that the selection and location of said trees is in accordance with Sec. 14-145 of this ordinance.

Sec. 14-149. Permit to plant, prune, or remove trees on rights-of-way.

(a) *Permit.* It is unlawful for any person to plant, remove, or prune any tree or shrub which is upon public property, including rights of way, without first obtaining from the city a permit in writing to do so. Applications for city permits shall be made to the City Parks Department, and the City Parks Director or designee shall determine whether the requested permit shall be issued or denied. All permits shall be subject to the requirements of Section 14-145. A permit may be issued subject to reasonable restrictions or conditions, which shall be provided to the permittee in writing at the time of issuance of the permit, and it is unlawful to violate such restrictions or conditions.

(b) *Tree topping.* It shall be unlawful for any person, firm, or tree service to top any boulevard tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the city parks department.

(c) *Pruning, corner clearance.* Notwithstanding any other provision herein to the contrary, every owner of any tree on private property overhanging any street or right-of-way within the city shall prune the branches so that such branches shall not obstruct the light from any street lamp or obstruct the view of any street intersection and so that there shall be a clear space of eight feet (8') above the surface of the street or sidewalk. Said owners shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public. The city shall have the right to prune any tree or shrub on private property when it interferes with the proper spread of light along the street from a street light or interferes with visibility of any traffic control device or sign.

Sec. 14-150. Procedure for removal of inspection and application of control measures.

(a) The tree inspector is authorized to inspect premises and places within the city to determine whether shade tree pests exist thereon and to investigate all reported incidents of

shade tree pests. The tree inspector is authorized to take all reasonable measures to prevent the maintenance of public nuisances and may enforce the provisions relating to abatement in this section. Diagnosis of shade tree pests may be by the presence of commonly recognized symptoms; by tests as may be recommended by the commissioner of the Minnesota Department of Agriculture or the commissioner of the Minnesota Department of Natural Resources; or other reliable means.

(b) Except in situations of imminent danger to human life and safety, the tree inspector shall not enter private property for the purpose of inspecting or preventing maintenance of public nuisances without the permission of the owner, resident, or other person in control of the property, unless the tree inspector has obtained a warrant or order from a court of competent jurisdiction authorizing the entry.

(c) No person, firm, or corporation shall interfere with the tree inspector or with anyone acting under the tree inspector's authority while engaged in activities authorized by this section.

Sec. 14 -151. Standard abatement procedure.

Except as provided in Sec. 14-152 and 14-154, whenever a tree inspector determines with reasonable certainty that a public nuisance, as described by this ordinance, is being maintained or exists on premises in the city, the tree inspector is authorized to abate a public nuisance according to the procedures in this subdivision.

(a) The tree inspector will notify in writing the owner of record or occupant of the premises that a public nuisance exists and order that the nuisance be terminated or abated. The notice may be given in person or by mail. Failure of any party to receive the mail does not invalidate the service of the notice. A copy of the notice shall be filed with the city clerk.

(b) The notice of abatement shall state that unless the public nuisance is abated by the owner or occupant, it will be abated by the city at the expense of the owner or occupant. The notice shall specify the control measures to be taken to abate the nuisance, and provide a reasonable amount of time to abate the nuisance. The notice will also state that the owner or occupant has the right to appeal the determination that a public nuisance exists by submitting a request in writing to the city clerk within seven (7) days after service of the notice, or before the date by which abatement must be completed, whichever comes first.

(c) If no timely appeal is submitted, and the control measures prescribed in the notice of abatement are not complied with within the time provided by the notice or any additional time granted, the tree inspector or designated person shall have the authority to obtain permission or an administrative search warrant, enter the property, and carry out abatement in accordance with the notice of abatement.

Sec. 14-152. High-cost abatement.

If the tree inspector determines that the cost of abating a nuisance will exceed \$5,000 based on a reasonable, good faith estimate, the written notice must provide that if the nuisance is not abated within the reasonable amount of time provided. The date, time, and location of the hearing must be provided in the notice.

Sec. 14-153. Appeal Procedure.

If the city clerk receives a written request for a hearing on the question of whether a public nuisance exists, the City Council shall hold a hearing within seven (7) calendar days following receipt by the clerk of the written request. At least three (3) days notice of the hearing shall be given to the individual who made the written request for the hearing. The Council may modify the abatement notice or extend the time by which abatement must be completed. Each owner, agent of the owner, occupant, and lienholder of the subject property or properties in attendance, if any,

shall be given the opportunity to present evidence at the hearing. After holding the hearing, the City Council may issue an order requiring abatement of the nuisance.

Sec. 14-154. Abatement procedure in event of imminent danger.

(a) If the tree inspector determines that the danger of infestation to other shade trees is imminent, and delay in control measures may put public health, safety, or welfare in immediate danger, the tree inspector may provide for abatement without following Sec. 14-150 and 14-151. The tree inspector must reasonably attempt to notify the owner or occupant of the affected property of the intended action and the right to appeal the abatement and any cost recovery at the next regularly scheduled City Council meeting.

(b) Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition that poses an imminent and serious hazard to human life or safety.

Sec. 14-155. Recovery of cost of abatement liability and assessment.

(a) The owner of premises on which a nuisance has been abated by the city shall be personally liable for the cost to the city of the abatement, including administrative costs. As soon as the work has been completed and the cost determined, the city clerk or other official shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk.

(b) After notice and hearing, as provided in Minn. Stat. § 429.061 (which may be amended from time to time), the city clerk shall, on or before Sept. 1 next following abatement of the nuisance, list the total unpaid charges as well as other charges for current services to be assessed under Minn. Stat. § 429.101 against each separate lot or parcel to which the charges are attributable. The city council may then certify the charges against the property to the county auditor for collection along with current taxes the following year or in annual installments as the city council may determine in each case.

Sec. 14-156. Licensure of tree service firms, insurance and bond.

It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing trees within the City without first applying for and procuring a license, showing proof of insurance and posting the required surety bond pursuant to City Code Sections 12-1221 to 12-1222. Moreover, any person, firm, or corporation that provides tree care, tree trimming, or removal of trees, limbs, branches, brush, or shrubs for hire must be registered with the Minnesota Commissioner of Agriculture under Minn. Stat. Sec. 18G.07.

Sec. 14-157. Transporting wood prohibited.

It is unlawful for any person to transport elm, oak or ash wood, including elm, oak or ash firewood, with bark intact into or through the city or into or through any designated "zone of infestation" as defined by Minn. Stat. § 89.53. This prohibition shall not apply to movement of such wood pursuant to an approved wood disposal or utilization program authorized by Minn. Stat. § 89.53 or to transportation of wood intended for industrial use not to include firewood, provided such transportation of any wood for industrial use continues without interruption through the city or disease control area to their intended destination lying outside the city and disease control area.

Sec. 14-158. Diseased trees in boulevards.

The rights, duties and responsibilities of property owners set forth in this article shall be equally applicable to, and binding upon, abutting property owners with tree maintenance responsibilities under Sec. 20-4 pertaining to the regulation of grass, weeds and trees.

Sec. 14-159. Penalty.

(a) Any person, firm, or corporation that violates any provision of this section shall, upon conviction, be guilty of a misdemeanor. The penalty, which may be imposed for any crime that is a misdemeanor under this section, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days, or a fine of not more than \$1,000, or both.

(b) Upon conviction of a misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(c) The failure of any officer or employee of the city to perform any official duty imposed by this section shall not subject the officer or employee to the penalty imposed for a violation.

(d) In addition to any penalties provided for in this section, if any person, firm, or corporation fails to comply with any provision of this section, the City Council or any official designated by it may institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

Sec. 14-160. Severability.

Should any part of provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part held be invalid.

SECTION 2. This Ordinance shall become effective thirty (30) days after its passage and publication according to law.

Ayes:

Nays:

Absent:

First Reading:

Second Reading:

Final Reading:

ATTEST:

APPROVED:

Kay M. Murphy, City Clerk

Rita C. Albrecht, Mayor

CURRENT CODE

ARTICLE V. - SHADE TREE DISEASE CONTROL AND PREVENTION⁵

Sec. 14-141. - Policy and purpose.

The city has determined that the health of oak and elm trees is threatened by fatal diseases known as oak wilt and Dutch elm disease. It has further determined that the loss of oak and elm trees located on public and private property would substantially depreciate the value of property and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the council to control and prevent the spread of these diseases and provide for the removal of dead or diseased trees as nuisances.

Sec. 14-142. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Nuisance means:

- (1) Any living or standing tree infected to any degree with a shade tree disease; or
- (2) Any logs, branches, stumps or other parts of any dead or dying tree, so infected, unless such parts have been fully burned or treated under the direction of the tree inspector.

Shade tree disease means Dutch elm disease or oak wilt disease or any disorder affecting the growth and life of shade trees.

Tree inspector means the city forester or such other employee of the city as the city manager may designate and who shall thereafter qualify, together with his duly designated assistants.

Cross reference— Definitions generally, § 1-2.

Sec. 14-143. - Adoption of state law, rules and regulations.

Minn. Stat. § 18G.16 is hereby adopted by reference, together with the rules and regulations of the state commissioner of agriculture relating to shade tree diseases, provided that this article shall supersede such statutes, rules and regulations only to the extent of inconsistencies.

Sec. 14-144. - Unlawful act.

It is unlawful for any person to keep, maintain or permit upon premises owned by him or upon public property where he has the duty of tree maintenance any nuisance as defined in this article.

Sec. 14-145. - Inspection and diagnosis.

It is the power and duty of the tree inspector to enter upon public or private property, at any reasonable time, for the purpose of inspecting for, and diagnosing, shade tree disease. If shade tree disease is suspected and in performance of his duties, the tree inspector may remove such specimens, samples and biopsies as may be necessary or desirable for diagnosis.

Sec. 14-146. - Abatement of nuisance.

Abatement of a nuisance, defined in this article, shall be by spraying, removing, burning, or otherwise effectively treating the infected tree or wood to prevent spread of shade tree disease. Such abatement procedures shall be carried out in accordance with current technical and expert methods and plans as may

be designed by the state commissioner of agriculture. The city shall establish specifications for tree removal and disposal methods consistent therewith.

Sec. 14-147. - Procedure for removal of infected trees and wood.

- (a) Whenever the tree inspector finds with reasonable certainty that the infection, or danger of infection, exists in any tree or wood on any public or private property, he shall proceed as follows:
 - (1) If the tree inspector finds that the danger of infection of other trees is not imminent because of dormancy of shade tree disease, he shall make a written report of his finding to the council, which shall proceed by:
 - a. Abating the nuisance as a public improvement under Minn. Stat. ch. 429; or
 - b. Abating the nuisance as provided in subsection (b) of this section.
 - (2) If the tree inspector finds that danger of infection of other trees is imminent, he shall notify the owner of the property, or the abutting property, as the case may be, by certified mail that the nuisance will be abated within a specified time, not less than five days from the date of mailing such notice. The tree inspector shall immediately report such action to the city manager, and after the expiration of the time limited by the notice he may abate the nuisance.
 - (3) If the tree inspector finds with reasonable certainty that immediate action is required to prevent the spread of shade tree disease, he may proceed to abate the nuisance forthwith. He shall report such action immediately to the city manager and to the abutting property owner or to the owner of the property where the nuisance is located.
- (b) Upon receipt of the tree inspector's report required by subsection (a)(1) of this section, the city manager shall order the nuisance abated. Before action is taken by the city manager, the council shall publish notice of its intention to meet to consider taking action to abate the nuisance. This notice shall be mailed to affected property owners and published once no less than one week prior to such meeting. The notice shall state the time and place of the meeting, the streets affected, the action proposed, the estimated cost of the abatement, and the proposed basis of assessment, if any, of costs. At such hearing or an adjournment thereof, the city manager shall hear property owners with reference to the scope and desirability of the proposed project. The council shall thereafter adopt such resolution as it considers desirable and shall provide for the doing of the work by day labor or by contract.
- (c) The tree inspector shall keep a record of the costs of abatements done under this section and shall report monthly to the city clerk all work done for which assessments are to be made stating and certifying the description of the land, lots, parcels involved and the amount chargeable to each.
- (d) On or before September 1 of each year, the city clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this article. The city clerk may then spread the charges or any portion thereof against the property involved as a special assessment under Minn. Stat. § 429.101 and other pertinent statutes for certification to the county auditor and collection the following year along with current taxes.
- (e) No damage shall be awarded the owner for destruction of any tree, wood or part thereof pursuant to this article.

Sec. 14-148. - Spraying trees.

- (a) Whenever the tree inspector determines that any tree or wood is infected or threatened with infection, he may spray or treat all nearby high value trees with an effective concentrate or fungicide or both. Activities authorized by this subsection shall be conducted in accordance with technical and expert opinions and plans of the commissioner of agriculture and under the supervision of the commissioner and his agents whenever possible.
- (b) The notice and assessment provisions of section 14-147 apply to spraying and treatment operations conducted under this section.

Sec. 14-149. - Transporting wood prohibited.

It is unlawful for any person to transport elm wood, including elm firewood, with bark intact into or through the city or into or through any designated "disease control area" as defined by Minn. Stat. § 18G.16. This prohibition shall not apply to movement of such wood pursuant to an approved wood disposal or utilization program authorized by Minn. Stat. § 18G.16 or to transportation of elm wood intended for industrial use not to include firewood, provided such transportation of elm logs for industrial use continues without interruption through the city or disease control area to their intended destination lying outside the city and disease control area.

Sec. 14-150. - Interference prohibited.

It is unlawful for any person to prevent, delay or interfere with the tree inspector while he is engaged in the performance of duties imposed by this article.

Sec. 14-151. - Additional duties of tree inspector.

It is the additional duty of the tree inspector to coordinate, under the direction and control of the city manager, all activities of the city relating to the control and prevention of shade tree disease. He shall recommend to the city manager the details of a program for the control of the diseases and perform the duties incident to such a program adopted by the city manager.

Sec. 14-152. - Diseased trees in streets.

The rights, duties and responsibilities of property owners set forth in this article shall be equally applicable to, and binding upon, abutting property owners with tree maintenance responsibilities under section 20-4 pertaining to the regulation of grass, weeds and trees.

Sec. 14-153. - Subsidies.

The duty of any property owner to bear the cost of removing or maintaining trees, whether by private contract or assessment, shall be subject to a subsidy policy, if any, established by the city for the treatment or removal of trees infected with shade tree disease.